

AO 243 (Rev. 09/17)

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		Southern	District of West Virginia, Beckley Division
Name (under which you were convicted): Jose Jorge Abbud Gordinho			Docket or Case No.: 5:15-00237/5:19-cv-00312
Place of Confinement: Federal Medical Center, Butner		Prisoner No.: 12850-088	
UNITED STATES OF AMERICA		Movant (include name under which convicted) V. Jose Jorge Abbud Gordinho	

MOTION

1. (a) Name and location of court which entered the judgment of conviction you are challenging:

United States District Court, for the Southern District of West Virginia, Beckley Division

(b) Criminal docket or case number (if you know): 5:15-00237

2. (a) Date of the judgment of conviction (if you know): March 2016

(b) Date of sentencing: March 2016

3. Length of sentence: 8 years (96 months)

4. Nature of crime (all counts): Title 18 U.S.C. § 1347

Title 21 U.S.C. § 841(a)(1)

5. (a) What was your plea? (Check one)

(1) Not guilty ☐

(2) Guilty ☒

(3) Nolo contendere (no contest) ☐

6. (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?

N/A

N/A

N/A

6. If you went to trial, what kind of trial did you have? (Check one)

Jury ☐

Judge only ☒

7. Did you testify at a pretrial hearing, trial, or post-trial hearing?

Yes ☐

No ☒

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8. Did you appeal from the judgment of conviction?

Yes ☐No ☒

9. If you did appeal, answer the following:

(a) Name of court: N/A(b) Docket or case number (if you know): N/A(c) Result: N/A(d) Date of result (if you know): N/A(e) Citation to the case (if you know): N/A(f) Grounds raised: N/AN/AN/AN/AN/A

(g) Did you file a petition for certiorari in the United States Supreme Court?

Yes ☐No ☒

If "Yes," answer the following:

(1) Docket or case number (if you know): N/A(2) Result: N/AN/A(3) Date of result (if you know): N/A(4) Citation to the case (if you know): N/A(5) Grounds raised: N/AN/AN/AN/AN/AN/AN/AN/AN/A

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes ☐No ☒

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: N/A(2) Docket or case number (if you know): N/A(3) Date of filing (if you know): N/A

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- (4) Nature of the proceeding: N/A
- (5) Grounds raised: N/A

N/AN/AN/AN/A

- (6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐No ☒

- (7) Result: N/A

- (8) Date of result (if you know): N/A

- (b) If you filed any second motion, petition, or application, give the same information:

- (1) Name of court: N/A

- (2) Docket of case number (if you know): N/A

- (3) Date of filing (if you know): N/A

- (4) Nature of the proceeding: N/A

- (5) Grounds raised: N/A

N/AN/AN/AN/A

- (6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐No ☒

- (7) Result: N/A

- (8) Date of result (if you know): N/A

- (c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

- (1) First petition: Yes ☐ No ☒

- (2) Second petition: Yes ☐ No ☒

- (d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

N/AN/A

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12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

GROUND ONE: Counsel was ineffective for not Appealing upon Petitioner's request to do so.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Counsel was ineffective for not appealing and filing a Direct Appeal upon Petitioner's request to do so, on the day of sentencing. Counsel refused to Appeal stating that Petitioner had waived all of his rights away when he pled guilty. According to Garza v. Idaho, 17-1026, U.S. S.Ct. cite, Petitioner's counsel refused to file a Direct Appeal upon the Petitioner's request to do so. This is on the day of sentencing. Counsel informed Petitioner that he had no Appeal Rights because of his plea, and that Petitioner had waived them all away. And therefore, Petitioner had nothing to Appeal. Thereby, denying the Petitioner to his Garza v. Idaho, supra Constitutional Fifth and Sixth Amendment Rights to Due Process and the Right to file a Notice and Direct Appeal. [continued on the following page (5A of 13)]

(b) Direct Appeal of Ground One:

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

- (2) If you did not raise this issue in your direct appeal, explain why:

N/A

N/A

(c) Post-Conviction Proceedings:

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

- (2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

N/A

- (3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

GROUND ONE

(a) Supporting Facts

[Continued from previous page]

Petitioner had many issues he wanted to challenge on Direct Appeal in regards to this case, had counsel filed a Notice and Direct Appeal upon the Petitioner's request to do so, on the day of sentencing. But counsel refused to file any thing at all on the Petitioner's behalf.

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(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know):

N/A

Date of the court's decision:

N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

N/A

N/A

N/A

N/A

GROUND TWO: According to Title 28 U.S.C. § 2255(f)(3) this habeas Corpus is within the one year time period.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

According to Garza v. Idaho, 17-1026; Richardson v. United States, 526 U.S. 813, 817, (1999); and Dodd v. United States, 545 U.S. 357 (2005), this Section 2255(f)(3) Motion is within the One (1) year time period of Garza v. Idaho, supra.

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐No ☒

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(2) If you did not raise this issue in your direct appeal, explain why:

Counsel was ineffective for not doing so.

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:
N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available):
N/A
N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:
N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available):
N/A
N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

N/A

N/A

N/A

N/A

N/A

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GROUND THREE: Petitioner's Sentence is Unconstitutional

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Petitioner's Appeal, is unconstitutional and violates his Fifth and Sixth Amendment Rights to Due Process to a Direct and notice of of Appeal. Because counsel refused to pursue a Notice and Direct Appeal upon Petitioner's request to do so, on the day of sentencing.

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

N/A

N/A

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐No ☒

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(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

N/A

N/A

N/A

N/A

N/A

GROUND FOUR: Petitioner's plea is Involuntary based on counsel's refusal to Appeal.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Petitioner's request to Appeal was DENIED by counsel and the issues, that Petitioner wanted counsel to challenge on Direct Appeal, and to file a Notice of Appeal.

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

N/A

N/A

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

N/A

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Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

N/ADocket or case number (if you know): N/ADate of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available):

N/AN/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/ADocket or case number (if you know): N/ADate of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available):

N/AN/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

N/AN/AN/AN/AN/A

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

N/AN/AN/AN/AN/AN/A

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14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

N/A

N/A

N/A

N/A

N/A

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At the preliminary hearing:

Michael B. Hissam

(b) At the arraignment and plea:

Michael B. Hissam

(c) At the trial:

Michael B. Hissam

(d) At sentencing:

Michael B. Hissam

(e) On appeal:

Michael B. Hissam

(f) In any post-conviction proceeding:

Pro-se

(g) On appeal from any ruling against you in a post-conviction proceeding:

Pro-se

16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

N/A

(b) Give the date the other sentence was imposed: N/A

(c) Give the length of the other sentence: N/A

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☒

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18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

According to Garza v. Idaho, 17-1026, U.S. S.Ct. cite, Petitioner was denied a notice and Direct Appeal on the day of sentencing, upon, Petitioner's request of counsel pursue a Direct Appeal. Counsel simply refused to file an Appeal stating that Petitioner had waived all of his Rights away.

Petitioner is a laymen of the law, unskilled in the law, and therefore, needs the assistance of other prisoners, in filing this Habeas Corpus Motion.

According to Richardson, supra; Dodd, supra; and Garza, supra, Petitioner's Title 28 U.S.C. § 2255(f)(3) Motion is timely and the Plea is Involuntary, Unintelligent, and Unknowing.

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

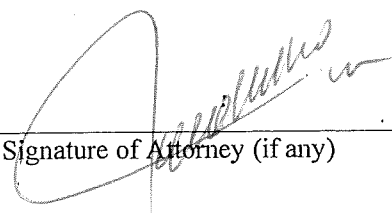
A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

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Therefore, movant asks that the Court grant the following relief:

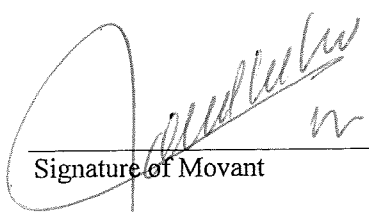
Petitioner Requests that this Honorable Court Restore and
Reinstate ALL of his Appeal Rights.
or any other relief to which movant may be entitled.



Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion
under 28 U.S.C. § 2255 was placed in the prison mailing system on April 15th 2019
(month, date, year)

Executed (signed) on April 15th 2019 (date)



Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

